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|---|---------------|----------------------|---------------------|------------------|
| APPLICATION NO.   | FILING DATE   | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 09/333,724  | 06/15/1999    | BRYAN C. GEBHARDT    | 2050.007US1         | 4443             |
| 44367   | 7590          | 01/13/2009           | EXAMINER            |                  |
| SCHWEGMAN, LUNDBERG & WOESSNER/OPEN TV<br>P.O. BOX 2938<br>MINNEAPOLIS, MN 55402-0938 |               |                      | SALCE, JASON P      |                  |
| ART UNIT  | PAPER NUMBER  |                      |                     |                  |
|   |               | 2421                 |                     |                  |
| MAIL DATE   | DELIVERY MODE |                      |                     |                  |
| 01/13/2009  | PAPER         |                      |                     |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |
|------------------------------|--------------------------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/333,724 | <b>Applicant(s)</b><br>GEBHARDT ET AL. |
|                              | <b>Examiner</b><br>Jason P. Salce    | <b>Art Unit</b><br>2421                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(o).

#### Status

1) Responsive to communication(s) filed on 15 September 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 2-10,12-14,17-19,22,23 and 29-31 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) 29 and 30 is/are allowed.

6) Claim(s) 22 and 31 is/are rejected.

7) Claim(s) 2-10,12-14,17-19 and 23 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date 9/15/2008

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 22 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 22 and 31 recite the limitation, "**provides control signal including**" in Lines 8-9 of Claim 22 and Line 8 of Claim 31. The Examiner cannot determine if the control signal includes **data identifying each broadcast program** or if the scheduling system provides **control signal including data**.

Claims 22 and 31 recites the limitation "**provides control signal including**" in Lines 8-9 of Claim 22 and Line 8 of Claim 31. There is insufficient antecedent basis for this limitation in the claim.

### ***Allowable Subject Matter***

Claims 2-10, 12-14, 17-19 and 23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 29-30 are allowed.

The following is an examiner's statement of reasons for allowance:

The prior art of record fails to anticipate or rendered obvious the combined elements/steps of "*a scheduling system provides control signal including data identifying each broadcast program and its duration*" in conjunction with "*generating commands to selectively schedule, start, stop, and cancel interactive application associated with the broadcast programs using the identification data and the duration data from the control signals*" as recited in the claims.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P. Salce whose telephone number is (571) 272-7301. The examiner can normally be reached on M-F 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jason P Salce/  
Primary Examiner, Art Unit 2421

Jason P Salce  
Primary Examiner  
Art Unit 2421

December 21, 2008